IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 9 of 1992

Date of Decision: 14.11.2006

Arjan Singh ...Appellant

Vs.

Surjit Singh & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Premjit Kalia, Advocate,
for the appellant.

Mr.Inderjit Sharma, Advocate,
for respondents No.1 to 4.

Vinod K.Sharma, J. (Oral)

Present appeal has been filed against the order passed by the learned Additional District Judge, Amritsar vide which appeal filed by the respondents herein was accepted and the case was remanded to lower court for fresh decision on merit after hearing the learned counsel for the parties in accordance with law.

The plaintiff-appellant had filed a suit for partition of joint property i.e. House No.4940/37 measuring 75.5 square yards in which the plaintiff had 2/3rd share. He also claimed 2/3rd share in the amount lying in the Central Bank which was deposited by Harnam Singh. It was claimed that the plaintiff and Harnam Singh were collateral. Harnam Singh had died

issueless. Hira Singh had two sons namely Jagat Singh and Ganga Singh. Ganga Singh had two sons namely Arjan Singh and Surjit Singh while Jagat Singh left behind plaintiff No.2 Ram Singh as his son. It was claimed that Harnam Singh was living separately in the house in dispute who died on 29.10.1984 without any issue while the plaintiffs are the residents of Bihar. Wife of Harnam Singh had died before the death of Harnam Singh and thus, the property in dispute was inherited by plaintiffs No.1 and 2 and defendant No.1, in equal shares.

Defendant No.1 got sale deed executed in favour of defendants No. 2 to 4 of the property in dispute by taking advantage of the absence of the plaintiff. Defendant No.1 had claimed that Harnam Singh had executed a Will in his favour though no such Will has been executed. The Will was claimed to be bogus one and the sale deed executed by defendant No.1 in favour of defendants No.2 to 4 was claimed to be illegal and ultra vires. It was claimed that defendant No.1 had 1/3rd share in the suit property and the said sale deed is valid only qua the share of defendant No.1 and thus, the suit for partition of the house as well as for recovering the amount lying in the bank was filed.

The suit was contested by defendant No.1, while defendants No.2 to 4 were proceeded ex parte. It was alleged that the suit was not maintainable in the present form as the plaintiffs were not in possession of constructed portion of the house property. It was claimed that the plaintiffs have no locus standi to file the present suit as the property has already been sold by defendant No.1 being owner on the basis of Will. It was also claimed that the suit was not properly valued for the purposes of court fee and jurisdiction and that it was bad for misjoinder of parties and cause of

action. It was claimed that the plaintiffs never served Harnam Singh during his life time. It was also claimed that Harnam Singh executed a registered Will in favour of defendant No.1 which was valid one and that the sale deed executed by defendant No.1 was valid and legal. Other allegations of the plaintiffs were denied.

After filing the replication, the following issues were framed:-

1. Whether the plaintiffs are the successors of Harnam Singh, as per pedigree table mentioned inpara No.1 of the plaint?OPP

2. Whether the plaintiffs and defendant No.1 are entitled to inherit the self acuired property of deceased Harnam Singh in equal shares?OPP

3. Whether the will executed by deceased Harenam Singh was valid will?OPD (amended vide ordr dated 2.12.85).

4. Whether the plaintiffs are entitled to get the partition of the property in dispute? OPP

5. Whether the defendant No.1 has sold the property in dispute as mentioned in plaint? OPP

6. What is the extent of the share of the plaintiffs in the property in dispute left by deceased Harnam Singh? OPP

7. Whether the suit is not maintainable in the present form?OPP

8. Whether the suit is properly valued for the purposes of the court fee and jurisdiction? OPP

9. Whether the suit is bad for misjoinder of party? OPD

10. Whether the plaint is properly sgned and verified by the

duly authorirsed person? OPP

11. Relief.

All the issues were decided in favour of the plaintiffs-appellant and resultantly the suit was decreed.

The respondent No.1 herein filed an appeal. Learned lower Appellate Court observed that the interim orders passed by the trial court especially order dated 6.5.87 showed that the learned Trial Court did not have pecuniary jurisdiction to deal with the matter. The order dated 6.5.87 reads as under:-

> " Present: Counsel for the parties.
>
> At this stage, it has come to my knowledge, that the jurisdiction value of the suit fixed by the plaintiff is Rs.20,000/-. Therefore,this court has no jurisdiction to adjudicate the suit. Therefore, this suit be transferred to some other competent court for further proceedings. Counsel for the parties are present, and they are directed to appear in the court of District Judge,Amritsar on 18.5.87 for further orders.
>
> Sd/ Sub Judge IInd Class
> Amritsar 6.5.87"

In view of the said interim order learned Additional District Judge came to the conclusion that as the learned Trial Court did not have pecuniary jurisdiction to deal with the matter,the decree passed was nullity and accordingly remanded the case back to the learned Trial Court for fresh decision in accordance with law.

Mr. Premjit Kalia, learned counsel appearing for the appellant

has challenged the order passed by the learned Additional District Judge primarily on the ground that the parties participated in the proceedings without raising any objection. Evidence was led by the respective parties and even arguments were heard and the decree passed by the learned Trial Court without any objection from the opposite party. Learned counsel further contended that as a matter of fact on the date of passing of the decree by the learned Trial Court he had the pecuniary jurisdiction to entertain and try the suit as he stood promoted as Sub Judge Ist Class and therefore the decree could not be set aside on this ground especially when nothing was brought on record to show as to how injustice has been caused to the respondents in the trial of the case. In support of this contention learned counsel has placed relaicne on the judgment of this Court in **Ramesh Chander Vs. Bhushan Lal AIR 1984 Punjab and Haryana 345** wherein it has been held as under:-

> "8. Considered in this light, in the context also of the provisions of S.21 (2) Civil P.C., no occasion for imputing any inherent lack of jurisdiction arises here.
>
> 9. It will be seen that the case remained pending in the Court of Subordinate Judge II Class for over a year and a half. Both the parties examined witnesses and adduced evidene without any reservation. It was only on the conclusion of the evidence, that objection to the evidence already recorded was sought to be taken. This was by no means the earliest opportunity that the petitioner had of raising it and what is more, counsel for the petitioner could point to no failure of justice caused by the recording of evidence by the Subordinate

Judge II Class."

It is the settled law that no judgment or decree can be questioned for want of territorial or pecuniary jurisdiction in the absence of any injustice having been caused. In view of this the impugned order cannot be sustained.

Accordingly, this appeal is allowed. The impugned order is set aside and the case is remanded back to the learned lower Appellate Court for decision on merit.

The parties through their counsel are directed to appear before the learned Additional District Judge Amritsar on 14.12.2006.

(Vinod K.Sharma)
Judge

14.11.2006
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